

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
SUN RIVER BASIN (41K)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Larry L. & Donna M. Batch Family Trust

CASE 41K-0123-R-2023
41K 208782-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above-captioned claim appeared in the Preliminary Decree for the Sun River (Basin 41K) with the following issue remarks:

41K 208782-00:

THIS CLAIM PRESENTS ISSUES OF FACT AND LAW THAT MAY BE ADDRESSED AT THE OBJECTION STAGE. IT APPEARS THE OWNER MADE AN UNAUTHORIZED CHANGE IN THE POINT OF DIVERSION AFTER JULY 1, 1973. 85-2-402 REQUIRES DEPARTMENT APPROVAL OF THIS CHANGE TO PERFECT THIS RIGHT.

The remark was not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence. On July 8, 1997 a Master's Report was issued for case 41K-1A that included information and findings of fact regarding claim 41K 208782-00. Specifically, the Report stated that the claimant filed a Request to Amend Statement of Claim seeking to correct the point of diversion to the historical point of diversion. The Report corrected the point of diversion as requested but did not remove the issue remark appearing on the claim. An Order Amending and Adopting Master's Report was issued on February 2, 1998 without changes to claim 41K 208782-00.

FINDINGS OF FACT

1. Pursuant to the July 8, 1997 Master's Report and February 2, 1998 Order Amending and Adopting Master's Report, the point of diversion for claim 41K 208782-00 decreed in the Preliminary Decree reflects historical use of the claim.
2. The remark was resolved during prior proceedings and should be removed as moot.

PRINCIPLE OF LAW

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(12), MCA.

CONCLUSION OF LAW

1. The issue remark on claim 41K 208782-00 should be removed from the claim as the underlying issue identified by the remark was previously addressed by this Court and

the issue has been resolved.

RECOMMENDATION

1. Upon review the record in this case, the issue remarks should be removed from the claims.

Post Decree Abstracts of Water Right Claims are attached to this Master's Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Larry L. & Donna M. Batch Family Trust
521 Marilyn Lane
Redlands, CA 92373

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SUN RIVER
BASIN 41K**

Water Right Number: 41K 208782-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: BATCH, LARRY L & DONNA M FAMILY TRUST
521 MARILYN LN
REDLANDS, CA 92373

Priority Date: OCTOBER 7, 1892

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 16.10 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 2.59

***Source Name:** SUN RIVER

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWSE	32	21N	2E	CASCADE

Period of Diversion: APRIL 1 TO OCTOBER 1

Diversion Means: PUMP

Subdivision: TWIN SILOS RANCHETTES TRACT/LOT: 7 BLOCK: 5

Period of Use: APRIL 1 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.59		NWNWSW	32	21N	2E	CASCADE

Subdivision: TWIN SILOS RANCHETTES TRACT/LOT: 7 BLOCK: 5

Total: 2.59

Remarks:

THIS WATER RIGHT IS INCIDENTALLY USED FOR STOCKWATER.